

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:CORP:03

PLR-117298-13

Date:

November 25, 2013

Taxpayer =

State A =

Exchange =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

a =

b =

x =

y =

Dear \_\_\_\_\_ :

We respond to your letter dated June 24, 2013, requesting rulings under sections 301 and 305 of the Internal Revenue Code (the Code). Additional information was received in a letter dated November 22, 2013. The information submitted is summarized below.

### **Facts**

Taxpayer is a State A corporation that is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar year basis. Taxpayer has one class of voting common stock outstanding (Taxpayer Stock), which is publicly traded and listed on the Exchange.

Taxpayer intends to elect under section 856 of the Code to be treated as a real estate investment trust (REIT), effective Date 5 (First REIT Taxable Year). In connection with the REIT election, prior to the end of the First REIT Taxable Year, Taxpayer intends to distribute all of its earnings and profits that were, or will be, accumulated by Taxpayer for all taxable periods ending prior to the First REIT Taxable Year (C Corporation E&P) as required by section 857(a)(2)(B). Specifically, Taxpayer intends to make one or more distributions to its shareholders with respect to Taxpayer Stock during the taxable years ending on Date 3 and Date 4 (each referred to as a Purging Distribution).

With respect to each Purging Distribution, Taxpayer will give each shareholder an election to receive its portion of the distribution (i) entirely in cash (the Cash Option) or (ii) entirely in Taxpayer Stock (the Equity Option). In the event that a shareholder does not make an election, that shareholder will be considered to have chosen the Equity Option.

The total amount of cash available in a Purging Distribution will be a specified percentage of the aggregate value of the Purging Distribution (the Cash Amount), and the Cash Amount will not be less than 20 percent of the aggregate value of the distribution. If the number of shareholders that elect the Cash Option would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Amount, then all shareholders electing the Cash Option will receive cash equal to the amount elected; if the payment of cash would exceed the Cash Amount, then shareholders that elect the Cash Option will receive a pro-rated portion of the Cash Amount, which will not be less than 20 percent of its entire entitlement under the distribution, and the remaining balance in Taxpayer Stock. Taxpayer also anticipates paying cash in lieu of fractional shares of Taxpayer Stock, though cash paid in lieu of fractional shares will not count against the Cash Amount.

Taxpayer also has two classes of convertible debentures, one class that was issued on Date 1 (the Date 1 Convertible Debt) and one class that was issued on Date 2 (the Date 2 Convertible Debt). The initial conversion rate for the Date 1 Convertible Debt was a shares of Taxpayer Stock per \$x principal amount and for the Date 2 Convertible Debt was b shares of Taxpayer Stock per \$y principal amount. In connection with each Purging Distribution and pursuant to the terms of each of the Convertible Debts, the conversion rates applicable to the Convertible Debts will be increased (the Adjustments), which will entitle the holders of Convertible Debt (the Holders) to receive upon conversion a greater number of shares of Taxpayer Stock than they otherwise would be entitled to receive if the Adjustments to the Convertible Debts' conversion rates were not made. Accordingly, the Adjustments will entitle the Holders to receive upon conversion a greater proportionate interest in the assets or earnings and profits of Taxpayer than they otherwise would receive if the Adjustments were not made.

Taxpayer represents that the calculation of the number of Taxpayer Shares to be received by any shareholder will be determined, over a period of up to two weeks ending as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. Similarly, Taxpayer represents that the Adjustment to the conversion rate on each class of the Convertible Debt is typical for comparable convertible debt, in accordance with market practices and norms, and designed to adjust the conversion rate so that a Holder of the Convertible Debt receives value comparable to the distribution he would have received had he previously converted his notes into Taxpayer Stock and thus received the distribution paid on that stock.

Taxpayer represents that it currently does not have a dividend reinvestment plan (DRIP) in effect and that it may choose to implement a DRIP in the future. Accordingly, for any Taxpayer shareholder participating in a future DRIP, Taxpayer represents that the DRIP will apply to the Purging Distribution only to the extent of the cash that the Taxpayer shareholder would have received in the distribution in the absence of the DRIP.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows:

- (1) Any and all of the cash and Taxpayer Stock distributed during the taxable years ending on Date 3 and Date 4 in a Purging Distribution by Taxpayer to holders of the Taxpayer Stock using the election described above shall be treated as a distribution of property with respect to the Taxpayer Stock to which section 301 applies (sections 301 and 305(b)(1)).

- (2) The amount of the distribution of Taxpayer Stock shall be the fair market value of such stock on the date of distribution if such Purging Distribution occurs during the taxable years ending on Date 3 and Date 4 (section 1.305-1(b)(1)).
- (3) Provided that cash is distributed during the taxable years ending on Date 3 and Date 4 according to the election described above in a Purging Distribution by Taxpayer to any holders of Taxpayer Stock, then the Adjustments made in connection with that distribution to the Convertible Debt shall constitute a deemed distribution of Taxpayer Stock to the Holders to which section 301 applies by reason of section 305(b)(2) and (c) (Rev. Rul. 75-513, 1975-2 C.B. 114). The amount of the deemed distribution of stock shall be measured by the fair market value, as of the date of the Adjustments, of the number of shares of Taxpayer Stock deemed distributed to the Holders (sections 1.305-1(b)(3) and 1.305-3(e) (Examples (6), (8), (9), and (15)); Rev. Rul. 75-513).

### **Caveats**

Rulings concerning each Purging Distribution are void, and we do not express any opinion on the tax consequences of such distributions, if they are not completed during the taxable years ending on Date 3 and Date 4. Further, except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of these proposed distributions under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from these distributions that is not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer will qualify as a REIT under Subchapter M of the Code; the validity of the valuation methodology chosen by Taxpayer in determining the number of shares issued in a distribution; or any tax consequences resulting from the establishment of a DRIP.

### **Procedural Statements**

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Filiz A. Serbes  
Branch Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: